

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3945 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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VIRJI S VIZUDA

Versus

DIVISIONAL CONTROLLER

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Appearance:

MR DG Shukla for Mr SI NANAVATI for Petitioner

MR Anjaria for Mr SN SHELAT for Respondent No. 1

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CORAM : MR.JUSTICE R.BALIA.

Date of decision: 11/12/96

ORAL JUDGEMENT

1 This special civil application is directed against the award dated 12.6.1984 made by the learned Labour Court, Rajkot, in case of a Reference made to it

in respect of dismissal of the petitioner for the misconduct of remaining absent from duty without leave.

2 The respondent has terminated the services of the petitioner for the aforesaid misconduct. The Tribunal has found misconduct to be proved. However, it was satisfied that the order of dismissal was not justified. Therefore, it set aside the order of dismissal and directed reinstatement of the workman by denying him 50% of the back wages. The learned counsel for the petitioner relied upon the case of Surendra Kumar Verma vs. Industrial Cum Labour Court, New Delhi, reported in 1980 Lab. IC 1292 for contending that the order of reinstatement must result ordinarily to award of full back wages. He further submitted that since ordinary rule has not been followed in the present case and no specific reasons have been assigned, the order suffers from arbitrary exercise of discretion vested in the Tribunal and the same deserves to be quashed.

3 Having carefully considered the contention of the learned counsel for the petitioner, I am of the opinion that the same is not well founded. Firstly, it is a case of proved misconduct in which the Tribunal was satisfied that dismissal was not justified. Where there is a case of proved misconduct, section 11A of the Industrial Disputes Act envisages that the Tribunal can impose punishment in lieu of a dismissal as the circumstances of the case may require. It also envisages that dismissal may be set aside with direction to reinstatement on such terms and conditions as it thinks fit. Thus, the Tribunal had necessary jurisdiction to impose any lesser punishment than dismissal or to make a conditional order of reinstatement. The principle which has been relied on by the learned counsel for the petitioner has no application to the facts of the present case where the Tribunal, after finding the petitioner guilty of misconduct but has not satisfied about the reasonableness of punishment of dismissal awarded to the delinquent. In such event, where the misconduct is proved the next question obviously arises as to what should be the punishment to be imposed. Therefore, in such cases unless the delinquent is exonerated from the charge of misconduct the award of back wages cannot be considered to be as a matter of course, as it may be said to be in the cases of invalid retrenchment envisaged in discharge from services simpliciter without any element of punishment. In such cases, often principle of no wages for no work has been applied keeping in view the facts and circumstances of the case. Even the various Conduct Rules framed by the Central Government or the State

Governments do envisage such contingency where a dismissed employee is reinstated on appeal by exonerating the delinquent of the charge, he is entitled to the emoluments for the period of suspension as well as the period for which he has not worked, but where reinstatement is ordered as a substitution of any other punishment, keeping in view the misconduct proved, the award of full emoluments for the period of suspension or for the period of absence is dependent upon an order being made in that respect specifically.

4 It is also settled that denial of back wages amounts to punishment. Petitioner has been denied 50% of the back wages as a punishment in lieu of setting aside order of dismissal for proven misconduct. Lastly, it was urged that denial of 50% back wages is a punishment grossly disproportionate to gravity of misconduct proved. This contention is stated to be rejected.

5 In the facts and circumstances of the present case where the petitioner has been found to be guilty of misconduct of remaining absent without leave and has also been repeater of like misconducts, denial of 50 per cent back wages on being reinstated cannot be said so grossly disproportionate to the proved misconduct so as to warrant interference under Article 226 of the Constitution of India. The petition is therefore rejected with no order as to costs. Rule is discharged.

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